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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

THERON CLAYTON HARRIS,

Defendant and Appellant.

C063046

(Super.Ct.No.  
CM031063)

After the execution of a search warrant at his residence revealed over 13 ounces of cocaine and indicia of sales, defendant Theron Clayton Harris entered a negotiated plea of no contest to possessing cocaine for sale (Health & Saf. Code, § 11351), and another charge was dismissed. He was sentenced to a prison term of three years, with 72 days of presentence custody credit and 36 days of conduct credit.

Defendant's sole contention on appeal is that the January 2010 amendments to Penal Code section 4019 (hereafter section 4019) apply retroactively to his pending appeal, entitling him to additional

presentence conduct credits. We agree and shall modify the judgment accordingly.

#### DISCUSSION

The amendments to section 4019 apply to all appeals, including defendant's, pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant of the act is not final"]; *People v. Doganiere* (1978) 86 Cal.App.3d 237; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393.) Defendant is not among the prisoners excepted from the additional accrual of credit. (Pen. Code, § 4019, subds. (b)(2), (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Thus, having served 72 days of presentence custody, he is entitled to 72 days, not 36 days, of presentence conduct credits.

#### DISPOSITION

The judgment is modified to reflect that defendant is entitled to 72 days of presentence custody credits and 72 days of presentence conduct credits. As so modified, it is affirmed. The trial court is directed to amend the abstract of judgment to reflect this modification and to forward a copy of the amended abstract to the Department of Rehabilitation and Corrections.

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SCOTLAND, P. J.

We concur:

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RAYE, J.

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HULL, J.